IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10594 of 1999

with

SPECIAL CIVIL APPLICATION No 3061 of 1998

with

SPECIAL CIVIL APPLICATION No 6432 of 2000

with

SPECIAL CIVIL APPLICATION No 7403 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASHCHAND JOGARAM PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10594 of 1999

MR YN OZA, Sr, Advocate with MR NIRZAR S DESAI for Petitioners

MR SP HASURKAR for Respondent No. 1

RULE SERVED BY DS for Respondent No. 4

MR IS SUPEHIA for Respondent No. 5, 6, 7

2. Special Civil Application No 3061 of 1998

MR YN OZA, Sr. Advocate with MR NIRZAR S DESAI for Petitioners
MR SP HASURKAR for Respondent No. 1
RULE SERVED BY DS for Respondent No. 4
MR IS SUPEHIA for Respondent No. 5, 6, 7

3. Special Civil Application No 6432 of 2000
MR IS SUPEHIA for Petitioners
MR SP HASURKAR for Respondent No.1
MR YN OZA, Sr. Adv. with MR NIRZAR S DESAI for Respondents No. 2 to 14

4. Special Civil Application No 7403 of 2000
MR IS SUPEHIA for Petitioner
MR SP HASURKAR for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/10/2000

ORAL JUDGEMENT

1. These are two sets of petitions. In fact one set is counter to the other. The parties are also common and the matters relate to the same controversy and as such these are taken up for hearing together and are disposed of by this common judgment.

2. Learned counsel for the parties made arguments with reference to the special civil application No.10594 of 1999 and for deciding these matters, the facts are also taken from this petition.

3. The petitioners challenge by this petition the action of the respondents of not allocating the petitioners to the category of Unarmed Police Constable in spite of the fact that the petitioners are, in all respects, satisfying all the criteria for being allocated to the category of Unarmed Police Constable and are ahead in the merit list prepared for recruitment to Police Constables , of some of the persons who have been allocated in the Unarmed Police Constable category. Out of these four matters, three arise from Banaskantha District and one from Kutch District. In the special civil applications No.10594/99 and special civil application No.3061/98, the petitioners are praying for their allocation on the post of Unarmed Police Constable whereas in other petitions, the petitioners therein have come up before this Court with the grievance that they may not be sent as Armed Police Constable. In view of the admitted facts it is not necessary to digest on the facts of these cases in detail.

4. It is not in dispute between the learned counsel for the parties that recruitment to the post of Armed and Unarmed Police Constables is to be made in accordance with the recruitment rules by a common recruitment. However these two i.e.Unarmed and Armed Police Constables are separate and distinct categories. It is also not in dispute that these posts are not interchangeable. Learned counsel for the parties are further in agreement that the training programme for these two posts is different. The syllabus for written examination for confirmation on these two posts during training period is also to certain extent different. So it is a case where these two are separate posts which are not interchangeable. So also avenues of promotion are separately provided. However, the recruitment has to be made by a common selection. Learned counsel for the parties are in agreement that the candidates have to give option whether they want to go to the category of Unarmed constable or Armed Constable and they have to be allocated to the Armed or Unarmed Constable category, as far as possible, as per their option but as per their merit. It is to be made clear that if a candidate gives option for Unarmed Police Constable but another candidate who is higher in merits has also opted for this category then the person at lower in merits will not get this category and he has to go to Armed Constable category. In the first set of petitions, the petitioners, 12 in number, who have come up before this Court for their allocation to Unarmed Police Constable category are represented by Shri Y.N. Oza, Sr. Advocate assisted by Shri Nirzar S. Desai, advocate. The 17 persons who are the petitioners in other set are represented by Shri I.S. Supehia, advocate who are allocated as Unarmed Police Constables and when they are sought to be allocated as Armed Constables have filed the petitions. It is also not in dispute that all the petitioners, i.e. 12 have been confirmed as Armed Police Constables and 17 have been confirmed as Unarmed Police Constable. There is consensus amongst the advocates appearing for the parties that these petitions have been filed by the petitioners only after they have been confirmed on the post of Unarmed or Armed category, as the case may be, on completion of their training and on passing of the examination.

5. Learned counsel for the petitioners, in one set of petitions, Shri Y.N. Oza, Sr. Advocate, contended that in this case while making allocation of the candidates for Unarmed Police Constable, merits and options given by the meritorious candidates have been

given total go-bye. The petitioners, 12 in number, are placed at higher in number than 17 petitioners in the other set of petitions in common select list. These 12 petitioners have given option for their appointment as Unarmed Police Constables but ignoring their options and merits, 17 petitioners in other set of petitions were posted as Unarmed Police Constables. These 12 petitioners were posted as Armed Police Constables. This is what, Shri Oza contended, is contrary to the provisions of Articles 14 and 16 of the Constitution.

6. Learned counsel for the respondents, State of Gujarat, Home Department and Police Department, and Shri I.S. Supehia, appearing for the petitioners in other set of petitions, in contra contended that the 17 persons were given posting as Unarmed Police Constables as they were Graduates as Unarmed Police Constables have to do written work where more qualified persons are required and though they were lower in merits in the merit list, have been preferred and allocated to the category of Unarmed Police Constables.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The weightage to educational qualifications may be given while preparing the merit list. It is not the case of the learned counsel Shri I.S. Supehia that his clients (17 petitioners in the petitions filed by him) acquired this higher qualification after their selection. They were possessing this qualification on the day on which they applied for the post and merit list has been prepared. It is difficult to accept that while preparing the merit list, the Selection Committee would not have been known of and taken note of this higher qualification possessed by these persons. The petitioner, 17 in number, represented by Shri I.S. Supehia, were despite of possessing this qualification were placed at lower in number than the petitioners, 12 in number, who are represented by Shri Y.N. Oza, Sr. Advocate, and so whatever weightage could have been given for this higher qualification would have been given at that point of time. After preparation of the selection list, no weightage can be given of this higher qualification possessed by these persons. That stage has gone. The allocation of the selected candidates has to be made in order of their merits as per their options. If 12 petitioners who stand at higher merits than these 17 petitioners in second set of petitions and opted for Unarmed Constables, should have been given the posts accordingly. The action of the State of Gujarat and its Officers in Police Department to give weightage to the

qualification possessed by the petitioners, i.e. the 17 petitioners, ignoring the merits and posting them as Unarmed Police constable is wholly arbitrary and unjustified and violative of Articles 14 and 16 of the Constitution. There is all possibility that these persons are favoured by the Department for some consideration or for undisclosed reasons. The grounds given for favouring these persons in the matter of allocation to them on the post of Unarmed Police Constables is not tenable in the eye of law. No weightage could have been given for this higher qualification in the matter of allocation after preparation of the final panel/merit list. This action of the State of Gujarat and its officers to allocate these 17 petitioners as Unarmed Police Constables cannot be allowed to stand.

8. Shri I.S. Supehia, learned counsel for these petitioners contended that these petitions deserve to be dismissed only on the ground of delay and laches. In support of this contention, he placed reliance on the decision of the Apex Court in the case of Ramchandra Shankar Deodhar & Ors. vs. State of Maharashtra & Ors. reported in AIR 1974 SC 259. He contended that by allocation of these petitioners as Unarmed Police Constable they acquired a right to continue on the post. It is further stated that by this reshuffling their accrued rights on the post of Unarmed Police Constable will be disturbed. In his submission, it will result in causing serious prejudice to these petitioners and they will be put to risk of termination of their services because they have to undergo training and pass examination during the training for Armed Police Constable for which a separate syllabus is there. In his submission, the petitioners have already undergone the training and passed the examination for Unarmed Police Constable and by virtue of that they have also been confirmed in that category. By their transfer this confirmation shall go.

9. I find merits in some of the grievance made by the learned counsel for these 17 petitioners but the contention raised for dismissal of the petitions on the ground of delay and laches is difficult to accept. It is not in dispute that both set of the petitioners are now Armed Constables. They have come up before this Court after considerable delay. It is a modus-operandi, particularly, in the Police Department where employees and officers first take all their service benefits and then they make the claim for other benefits. They are very calculated in their approach and that is what they

did in the present case also. Both these sets of petitioners have not raised any voice till they completed their training, passed the examination and have been confirmed on the post. Thereafter they started to raise their claim for their appointments as Unarmed or Armed Constables, as the case may be. Otherwise also, these matters have been admitted. Both the counsel for the parties made arguments on merits. It is a case where grievance has been made that the appointing authority has given total go-bye to the merits of the candidates in selection and on their whims and wishes they have made the appointments. Delay in every case may not be a ground for dismissal of the petition. These two matters cannot be dismissed only on the ground of delay. It is also important to consider by the Court while examining the plea taken by the other side for dismissal of the petition on the ground of delay and laches whether the petitioners have any case on merits or not. In this case, the petitioners who are claiming for their appointment as Unarmed Police Constables have strong case on merits and in case this delay is taken to be fatal and the petitions are dismissed it will certainly result in not only causing prejudice to them but a seal to be put on unconstitutional and illegal action of the respondents to give total go-bye to the merits of the candidates.

As stated earlier, the training programme and syllabus for the examination for these posts are different. These persons have already been confirmed after successfully undergoing the training and passing the examination in the cadre of Unarmed Police Constable. Now by their transfer to the category of Armed Police Constable they have to undergo the training and pass the examination and there may be possibility of their failure in the training or the examination and as a result of which, their termination of the services. However, Shri S.P. Hasurkar, learned counsel for the respondents, State of Gujarat and its Officers, very fairly submitted that this Court may give direction that these persons on their allocation to Armed Police Constable category, be exempted from undergoing the training and passing of the examination.

10. Shri Supehia then made another contention that these petitioners, 17 in number, will suffer the loss of seniority. Shri Hasurkar made a statement that this Court may also give direction to protect their seniority.

11. Shri Supehia, learned counsel then submitted that in L.P.A. filed against the interlocutory orders passed in these matters, the Division Bench has given out that

some solution may be found out by the State of Gujarat and its Officers so that all the petitioners 12 + 17 may continue as Unarmed Police Constables. The separate cadres are there of Unarmed and Armed Constables and accordingly the merits have been determined though combined recruitment is made but allocation of candidates is to be made to the extent of posts available in these two categories. In case what it is suggested by Shri Supehia is accepted then the posts exceeding the number of posts available of Unarmed Police Constables are to be filled in, meaning thereby, there will be excess posts in Armed Police Constable category and then that posts will have to be filled in by giving fresh advertisement and merely because these two category persons are fighting these posts cannot be permitted to be exhausted by adjusting these persons. This is an illegality committed by the respondent - State of Gujarat and its functionaries and for which it cannot come as a gift or lottery to these persons and they cannot be permitted more so when their services are not likely to be terminated and whatever apprehension which has been shown, will no more be there as this Court will protect all of their service conditions. Secondly, in case, such a course is adopted then it will give licence and free hand and liberty to the Officers of the Police Department to act contrary to the recruitment rules as well as constitutional provisions and make appointment in excess of posts available of one category. There is an attraction amongst the candidates to go for Unarmed Police Constable in preference to Armed Police Constables. The incentives and attraction for the post of Unarmed Police Constable is a matter of realisation and not for discussion. However, any action of the respondents which is contrary to recruitment rules as well as the constitutional provisions and which has also been done in total ignorance of merits of the candidates, cannot be allowed to stand, otherwise it will result in perpetuating illegality. Delay is certainly there in approaching to this Court by these 12 constables but if we go by this delay and illegality committed by the authorities and the benefit which these 17 candidates got and more so there may not be any endanger to any of their service conditions which the Court is going to protect, only on this ground, this petition cannot be rejected.

12. In the result, the special civil applications No.10594/99 and 3061/98 succeed and the same are allowed. It is hereby declared that the petitioners therein are to be posted as Unarmed Police Constables. As a result of this declaration, the special civil applications No.6432/2000 and 7403/2000 are dismissed. However, it is

made clear that the 12 petitioners in the first set of petitions and 17 petitioners in the second set of petitions who are to be posted now as Armed Police Constables and Unarmed Police Constables respectively are not required to undergo training and pass the examination for the cadre for which they are now to be posted in case they have already undergone the training and passed the examination for the category in which they were initially appointed. It is also made clear that the seniority in the respective cadres of Armed and Unarmed Police Constables where they have to be posted now has to be counted from their initial date of appointment. Rule in the special civil application Nos. 10594/99 and 3061/98 is made absolute accordingly and in the two other petitions it is discharged. The parties are to bear their own costs. The respondent-State of Gujarat and its Officers are directed to pass consequential orders of posting of these petitioners i.e. 17 petitioners in the first set of petitions as Unarmed Police Constables and 12 petitioners in second set of petitioner as Armed Police Constables within a period of one month from the date of receipt of writ of this order. Further orders as to exempting these persons from undergoing training and passing of the examination may also be passed simultaneously. Next order to protect their seniority is also to be made.

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